

## Office of the Secretary, Education

## § 5.13

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#### APPENDIX TO PART 5

AUTHORITY: 5 U.S.C. 552.

SOURCE: 45 FR 30803, May 9, 1980, unless otherwise noted.

## Subpart A—Definitions

### § 5.1 Act.

As used in this part, *Act* means section 552 of title 5, United States Code, as amended by Pub. L. 90-23, codifying the Act of July 4, 1966, sometimes referred to as the "Freedom of Information Act".

### § 5.2 Department.

As used in this part, *Department* means the Department of Education.

### § 5.5 Records.

As used in this part:

(a) *Record* includes books, brochures, punch cards, magnetic tapes, paper tapes, sound recordings, maps, pamphlets, photographs, slides, motion pictures, or other documentary materials, regardless of physical form or characteristics, made or received by the Department pursuant to Federal law or in connection with the transaction of

public business and preserved by the Department as evidence of the organization, functions, policies, decisions, procedures, operations, programs, or other activities.

(b) *Record* does not include: Objects or articles such as tangible exhibits, models, equipment, or processing materials; or formulae, designs, drawings, or other items of valuable property; books, magazines, pamphlets, or other reference material in formally organized and officially designated libraries of the Department, which are available under the rules of the particular library concerned.

### § 5.6 Statutory definitions.

The definitions in the Act and the Office of Management and Budget's "Uniform FOIA Fee Schedule and Guidelines," 52 FR 10012 (March 27, 1987), apply to this part.

[52 FR 32525, Aug. 27, 1987]

## Subpart B—What Records Are Available

### § 5.11 Purpose and scope.

This part constitutes the regulation of the Department respecting the availability to the public, pursuant to the Act, of records of the Department. It informs the public what records are generally available.

### § 5.12 General policy.

The Department's policy is one of the fullest responsible disclosure limited only by the obligations of confidentiality and the administrative necessities recognized by the Act. Unless otherwise exempted from disclosure pursuant to law, records of the Department shall be available for inspection and copying in accordance with this part.

### § 5.13 Records available.

(a) *Publication in the Federal Register.* The following shall be published in the FEDERAL REGISTER:

(1) Descriptions of the Department's central and field organization and the established places at which, the officers from whom, and the methods

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whereby, the public may secure information, make submittals or requests, or obtain decisions;

(2) Statements of the general course and method by which the Department's functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) Rules of procedures, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Department;

(5) Every amendment, revision, or repeal of the foregoing.

(b) *Agency opinions and orders.* The Department shall, in accordance with this part and applicable regulations, make available for public inspection and copying:

(1) All final opinions (including concurring and dissenting opinions) and all orders made in the adjudication of cases (initial decisions and reconsiderations thereof in matters that are not the result of administrative proceedings such as hearings or formal appeals are not "opinions and orders in the adjudication of cases");

(2) Those statements of policy and interpretations which have been adopted by the agency and are not published in the FEDERAL REGISTER;

(3) Administrative staff manuals and instructions to staff that affect any member of the public;

unless such materials are promptly published and copies offered for sale.

The Department shall maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter which is issued, adopted, or promulgated after July 4, 1967, and which is required by this paragraph (b) to be published or made available.

(c) *Availability of records on request.* In addition to the records made available pursuant to paragraphs (a) and (b) of this section, the Department shall, upon request for identifiable records

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made in accordance with this part, make such records available to any person, unless it is determined that such records must be withheld from disclosure and are exempt under subsection (b) of the Act and subpart F of this part.

### § 5.14 Published documents.

Published records of the Department, whether or not available for purchase, shall be made available for examination.

### § 5.15 Creation of records.

Records are not required to be created by compiling selected items from the files, and records are not required to be created to provide the requester with such data as ratios, proportions, percentages, per capita, frequency distributions, trends, correlations, and comparisons. If such data have been compiled and are available in the form of a record, the record shall be made available as provided in this part.

### § 5.16 Deletion of identifying details.

Whenever any final opinion, order, or other materials required to be made available pursuant to subsection (a)(2) of the Act relates to a private party or parties and the release of the name or names or other identifying details will constitute a clearly unwarranted invasion of personal privacy, the record shall be published or made available with such identifying details left blank, or shall be published or made available with obviously fictitious substitutes and with a notification such as the following as a preamble:

Names of parties and certain other identifying details have been removed [and fictitious names substituted] in order to prevent a clearly unwarranted invasion of the personal privacy of the individuals involved.

### § 5.17 Records in record centers.

When a request is made for identifiable records of the Department which have been stored in the National Archives or other record centers of the General Services Administration, but would otherwise be available under this Act, such records shall be requested by the Department for the requester.

**§ 5.18 Destroyed records.**

Records of specified form or character are destroyed after the lapse of time specified in the Records Disposal Act of 1943 (44 U.S.C. 366-380), the Federal Property Management Regulations (41 CFR parts 101-111), and the Records Control Schedules.

**§ 5.19 Records of other departments and agencies.**

Requests for records which originated in or concern matters which originated in another Department or Government agency may be forwarded to the Department or agency primarily concerned and the requester so notified.

**Subpart C—Freedom of Information Officer**

**§ 5.32 Freedom of information officer.**

The Freedom of Information Officer shall be responsible for determining whether records of the Department must be withheld from disclosure and shall have authority to deny requests for records of the Department.

**Subpart D—Procedures for Requesting Access to Records**

**§ 5.51 Procedure.**

(a) A request for any information or record may be made at any appropriate office of the Department.

(b) If a request is made at any office of the Department and the information or record is not located where the request is made, the requester shall be referred to the proper office, or if the request is put in writing it may be forwarded to the proper office.

(c) A request should reasonably identify the requested record by brief description. Requesters who have detailed information which would assist in identifying the records requested are urged to provide such information in order to expedite the handling of the request. Envelopes in which written requests are submitted should be clearly identified as a Freedom of Information request.

(d) Determination of whether records will be released or withheld will be made within 10 working days from date

of receipt in the office having custody of the records. This time may be extended by written notice for no longer than an additional 10 working days, only in unusual circumstances. Unusual circumstances mean:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

If such extension is made, the requester will be notified in writing with an explanation of why the extension was necessary and the date on which a determination will be made.

**§ 5.52 Copies of records.**

Copies of available records shall be produced as promptly as possible upon receipt of the fee therefor. Copying service shall be limited to not more than two copies of any single page, except that additional copies may be made where administrative considerations permit. Records which are published or available for sale need not be copied.

**§ 5.53 Denial of requests for records.**

Written requests for inspection or copying of records shall be denied only by the Freedom of Information Officer. Denials of requests shall be in writing and shall contain the reasons for the denial and provide the requester with appropriate information on how to exercise the right of appeal under subpart G of this part. Such notification shall also set forth the names and titles or positions of each person responsible for the denial of such request if such person or persons is other than the Freedom of Information Officer.